

Senate Bill 68

By: Senators Seabaugh of the 28th, Johnson of the 1st, Stephens of the 27th, Balfour of the 9th, Brown of the 26th and others

**AS PASSED**

**AN ACT**

To amend Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, so as to change certain definitions; to provide for board member recusals under certain circumstances; to provide for board approval of schools and instructors offering continuing education courses; to change certain provisions relating to hearings and investigations; to amend Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, so as to change certain definitions; to provide for recusal of a commission member in certain circumstances; to change a provision relating to removal of a commission member; to provide for the appointment of a director or coordinator for each approved school; to provide requirements for school approval; to provide for the commission's power to regulate school approvals; to provide for hearings relating to refusal to approve a school; to change provisions relating to investigation of complaints; to provide for related matters; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Chapter 39A of Title 43 of the Official Code of Georgia Annotated, relating to real estate appraisers, is amended by inserting immediately following paragraph (8) of Code Section 43-39A-2, relating to definitions, a new paragraph (8.1) to read as follows:

"(8.1) 'Classification' means any license, certification, registration, approval, or similar authorization to practice a trade or profession permitted by this chapter or by similar statutes in this or other states by whatever designation such authorization to practice may be known."

**SECTION 2.**

Said chapter is further amended by striking Code Section 43-39A-3, relating to the Georgia Real Estate Appraisers Board, and inserting in lieu thereof the following:

"43-39A-3.

(a) There is created the Georgia Real Estate Appraisers Board, which shall consist of five members. All members must be residents of Georgia. One member shall be a public member. The public member of the board shall not be connected in any way with the practice of real estate appraisal, real estate brokerage, or mortgage lending. Four members shall be real estate appraisers who have been actively engaged in the real estate appraisal business for at least three years. In appointing real estate appraisers to the board, while not automatically excluding other appraisers, the Governor shall give preference to real estate appraisers who do not hold an active, occupational license which authorizes their work in real estate brokerage or mortgage lending activities, who do not have a financial interest in any real estate brokerage firm or mortgage lending firm, and who are not employees of real estate brokerage firms or mortgage lending firms.

(b) The Governor shall appoint the members of the board, subject to confirmation by the Senate, with consideration given to appropriate geographic representation and to areas of appraisal expertise. Any such appointments made when the Senate is not in session shall be effective until acted upon by the Senate.

(c) A member of the board shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the board's initiating a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall be recused from voting on any investigative matter until the contested case involving such member is resolved.

(d) Upon expiration of their terms, members of the board shall continue to hold office until the appointment and qualification of their successors. The Governor, after giving notice and opportunity for a hearing, may remove from office any member of the board for any of the following:

- (1) Inability to perform or neglecting to perform the duties required of members;
- (2) Incompetence;
- (3) Dishonest conduct; or
- (4) Having a disciplinary sanction, other than a citation authorized by this chapter, imposed by any professional licensing agency on such member's right to practice a trade or profession.

(e) The members of the board shall annually elect a chairperson from among the members to preside at board meetings.

(f) The board shall meet at least once each calendar quarter, or as often as is necessary, and remain in session as long as the chairperson shall deem it necessary to give full

consideration to the business before the board. A quorum of the board shall be three members. Members of the board or others may be designated by the chairperson of the board, in a spirit of cooperation, to confer with similar boards of other states, attend interstate meetings, and generally do such acts and things as may seem advisable to the board in the advancement of the profession and the standards of real estate appraisal activity.

(g) Each member of the board shall receive as compensation for each day actually spent on his or her official duties at scheduled meetings and for time actually required in traveling to and from its meetings, not to exceed one day's traveling time, the sum of \$25.00 and his or her actual and necessary expenses incurred in the performance of official duties.

(h) The commission shall supply staff support for the board. The commissioner shall serve as executive officer of the board. The commissioner shall be charged with the duties and powers as delegated by the board."

### **SECTION 3.**

Said chapter is further amended by striking subsection (c) of Code Section 43-39A-8, relating to establishment of appraiser classifications complying with federal law, and inserting in lieu thereof the following:

"(c) The board, through its rules and regulations, shall establish standards for offering of all education courses required by this Code section and for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with the provisions of Code Section 43-40-15 et seq. Each approved school must designate an individual approved by the board to act as its director or coordinator, and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and its rules and regulations. No school approval shall be granted to a school unless:

(1) Said school designates an individual approved by the board to act as its director or coordinator who shall be responsible for assuring that the school and its approved instructors comply with the provisions of this chapter and its attendant rules and regulations; and

(2) Said school authorizes its director or coordinator to bind the school to any settlement of a contested case before the board as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said school may be a named respondent.

Violations of this chapter or its rules and regulations by an approved school shall subject the school and its director or coordinator to sanction as authorized by this chapter."

#### **SECTION 4.**

Said chapter is further amended by striking Code Section 43-39A-13, relating to the power of the board to regulate the issuance of appraiser classifications, and inserting in lieu thereof the following:

"43-39A-13.

The board, through its rules and regulations, shall have the full power to regulate the issuance of appraiser classifications; to discipline appraisers in any manner permitted by this chapter; to establish qualifications for appraiser classifications consistent with this chapter; to regulate approved courses, instructors, and schools; and to establish standards for real estate appraisals. Except for conducting an investigation as provided in this chapter, the board is authorized to enter into such contracts as are necessary to carry out its duties under this chapter; provided, however, the board may enter into contracts to assist it in the conduct of investigations authorized by this chapter only whenever it needs special legal or appraisal expertise or other extraordinary circumstances exist. Whenever the board contracts to perform such investigative functions, any such contractor working on an investigation authorized by this chapter shall be under the supervision of the board or a duly authorized representative of the board. Any contractor used by the board shall be knowledgeable in the work area for which such contractor is retained. A contractor shall not be empowered to determine the disposition of any investigation nor to make any discretionary decision that the board is authorized by law to make. Notwithstanding any other provision of law, the board is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the board to retain any funds required by the Constitution to be paid into the state treasury; provided, further, that the board shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' except Code Section 45-12-92, prior to expending any such funds."

**SECTION 5.**

Said chapter is further amended by inserting at the end of Code Section 43-39A-14, relating to the required conduct of applicants, refusal of classification, and imposition of sanctions, a new subsection (m) to read as follows:

"(m) The provisions of this Code section applicable to licensees shall also apply to approvals issued by the board."

**SECTION 6.**

Said chapter is further amended by striking subsection (a) of Code Section 43-39A-15, relating to hearings in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and inserting in lieu thereof the following:

"(a) If the board, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to issue an appraiser classification or approval to such applicant, the board shall provide an opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Unless otherwise agreed to by the board, all such hearings shall be held in the county of domicile of the board."

**SECTION 7.**

Said chapter is further amended by striking subsections (a) and (d) of Code Section 43-39A-22, relating to investigations, and inserting in lieu thereof the following:

"(a) The board may, upon its own motion, and shall, upon the sworn written request of any person, investigate the actions of any appraiser, applicant, or school approved by the board; provided, however, that, whenever a request for investigation involves an appraisal report which varies from a sales, lease, or exchange price by 20 percent or less, or, if the appraiser is acting as a tax consultant, which varies from the tax assessor's value by 20 percent or less, the board may in its discretion decline to conduct an investigation. Except for investigations of applicants for appraiser classifications, investigations of allegations of fraudulent conduct, or investigations of possible violations of this chapter which have been litigated in the courts or arise from litigation in the courts, the board shall not initiate an investigation on its own motion or upon a sworn written request for investigation unless the act or acts which may constitute a violation of this chapter occurred within five years of the initiation of the investigation."

"(d) The results of all investigations shall be reported only to the board or to the commissioner and the records of such investigations shall not be subject to subpoena in

civil actions. Records of investigations shall be kept by the board and no part of any investigative record shall be released for any purpose other than a hearing before the board or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the board upon an affirmative vote of a majority of the quorum of the board, review by the respondent after the service of a notice of hearing, review by the board's legal counsel, or an appeal of a decision by the board to a court of competent jurisdiction; provided, however, if an investigation authorized by this chapter results in the board's filing a notice of hearing or entering into settlement discussions with a member of the board, the commissioner shall immediately notify the Governor or the Governor's legal counsel of such action by the board. After service of a notice of hearing, a respondent shall have a right to obtain a copy of the investigative record pertaining to the respondent."

#### **SECTION 8.**

Chapter 40 of Title 43 of the Official Code of Georgia Annotated, relating to real estate brokers and salespersons, is amended in Code Section 43-40-1, relating to definitions, by inserting a new paragraph (4.5) and by striking paragraph (5) and inserting in lieu thereof the following:

"(4.5) 'License' means any authorization or approval to practice a trade or profession permitted by this chapter or by similar statutes in this or other states by whatever designation such authorization to practice may be known.

(5) 'Licensee' means any person who is licensed as a community association manager, salesperson, associate broker, broker, or qualifying broker or who holds an approval authorized by this chapter or similar designations in this or other states."

#### **SECTION 9.**

Said chapter is further amended in Code Section 43-40-2, relating to creation of the commission, by inserting immediately following subsection (b) a new subsection (b.1) and by striking subsection (c) and inserting in lieu thereof the following:

"(b.1) A member of the commission shall recuse himself or herself from voting on matters in which the member has a conflict of interest. Whenever an investigation authorized by this chapter results in the commission's initiating a contested case under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' against a member, such member shall be recused from voting on any investigative matter until the contested case involving such member is resolved.

(c) The Governor, after giving notice and an opportunity for a hearing, may remove from office any member of the commission for any of the following:

- (1) Inability to perform or neglecting to perform the duties required of members;
- (2) Incompetence;
- (3) Dishonest conduct; or
- (4) Having a disciplinary sanction, other than a citation authorized by this chapter, imposed by any professional licensing agency on such member's right to practice a trade or profession."

#### **SECTION 10.**

Said chapter is further amended by striking subsection (i) of Code Section 43-40-8, relating to the qualifications of licensees, and inserting in lieu thereof the following:

"(i) The commission, through its rules and regulations, shall establish standards for the approval of schools and instructors to offer the education courses required by this chapter. Each approved school must comply with Code Section 43-40-15 et seq. Each approved school must designate an individual approved by the commission to act as its director or coordinator, and such designated individual shall be responsible for assuring that the approved school complies with the requirements of this chapter and its rules and regulations. If an approved school is organized as a business entity, such school and designated individuals shall be subject to the same requirements of business entities and their qualifying brokers as identified in this chapter. The commission, through its rules and regulations, shall establish standards for the offering of the prelicense education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction. The commission, through its rules and regulations, may establish standards for the offering of continuing education courses required by this chapter by methods of instruction, which it deems to be educationally sound, other than in-class instruction."

#### **SECTION 11.**

Said chapter is further amended by striking Code Section 43-40-10, relating to the granting of a broker's, associate broker's, salesperson's, or community association manager's license to a firm, and inserting in lieu thereof the following:

"43-40-10.

- (a) No broker's license shall be granted to a firm unless:

(1) Said firm designates an individual licensed as a broker as its qualifying broker who shall be responsible for assuring that the firm and its affiliated licensees comply with the provisions of this chapter and its attendant rules and regulations; and

(2) Said firm authorizes its qualifying broker to bind the firm to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said firm may be a named respondent. Violations of this chapter or its rules and regulations by a firm licensed as a broker shall subject the license of the qualifying broker to sanction as authorized by this chapter. No broker's license shall be granted to a firm unless every person who acts as a licensee for such firm shall hold a real estate license.

(b) No school approval shall be granted unless:

(1) Said school designates an individual approved by the commission to act as its director or coordinator who shall be responsible for assuring that the school and its approved instructors comply with the provisions of this chapter and its attendant rules and regulations; and

(2) Said school authorizes its director or coordinator to bind the school to any settlement of a contested case before the commission as defined in Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' in which said school may be a named respondent.

Violations of this chapter or its rules and regulations by an approved school shall subject the school and its director or coordinator to sanction as authorized by this chapter.

(c) No associate broker's, salesperson's, or community association manager's license shall be granted to a corporation, limited liability company, or partnership unless said corporation, limited liability company, or partnership designates an individual who holds the same type of license as its qualifying licensee who shall be responsible for assuring that the corporation, limited liability company, or partnership complies with the provisions of this chapter and its attendant rules and regulations. Violations of this chapter or rules and regulations by a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager shall subject both the license of the entity and the license of the qualifying licensee to sanction as authorized by this chapter. The qualifying licensee shall be the only licensee of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager. The license of a corporation, limited liability company, or partnership licensed as an associate broker, salesperson, or community association manager must be assigned to a licensed broker. The licensed associate broker, salesperson,



community association manager, corporation, limited liability company, or partnership or qualifying licensee may not engage in the brokerage business except in behalf of the broker to whom its license is assigned."

### **SECTION 12.**

Said chapter is further amended by striking Code Section 43-40-14, relating to the power of the commission to issue, revoke, or suspend licenses and censure licenses, and inserting in lieu thereof the following:

"43-40-14.

The commission shall have the full power to regulate the issuance of licenses or approvals, to revoke or suspend licenses or approvals issued under this chapter, and to censure licenses or approvals. The commission is authorized to enter into such contracts as are necessary to carry out its duties under this chapter; provided, however, the commission may enter into contracts to assist it in the conduct of investigations and examinations of brokers' trust accounts authorized by this chapter only whenever it needs special legal or accounting expertise or other extraordinary circumstances exist. Whenever the commission contracts to perform such investigation or examination of trust account functions, any such contractor working on an investigation or examination of a trust account authorized by this chapter shall be under the supervision of the commission or an employee of the commission. Any contractor used by the commission shall be knowledgeable in the work area for which such contractor is retained. A contractor shall not be empowered to determine the disposition of any investigation or examination of a trust account nor to make any discretionary decision that the commission is authorized by law to make. Notwithstanding any other provision of law, the commission is authorized to retain all funds received as collection fees for use in defraying the cost of collection of fees required under this chapter. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury; provided, however, that nothing in this Code section shall be construed so as to allow the commission to retain any funds required by the Constitution to be paid into the state treasury; provided, further, that the commission shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,' except Code Section 45-12-92, prior to expending any such funds."

### **SECTION 13.**

Said chapter is further amended by inserting at the end of Code Section 43-40-15, relating to the grant, revocation, or suspension of licenses, a new subsection (n) to read as follows:

"(n) The provisions of this Code section applicable to licensees shall also apply to approvals issued by the Commission."

#### **SECTION 14.**

Said chapter is further amended by striking subsection (a) of Code Section 43-40-16, relating to the nonacceptance of applications for licenses, and inserting in lieu thereof the following:

"(a) If the commission, after an application in proper form has been filed with it, accompanied by the proper fee, shall refuse to issue a license or approval to such applicant, the commission shall provide an opportunity for a hearing for such applicant in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Unless otherwise agreed by the commission, all such hearings shall be held in the county of the domicile of the commission."

#### **SECTION 15.**

Said chapter is further amended by striking subsection (d) of Code Section 43-40-27, relating to investigation of complaints, and inserting in lieu thereof the following:

"(d) The results of all investigations shall be reported only to the commission or to the commissioner, and the records of such investigations shall not be subject to subpoena in civil actions. Records of investigations shall be kept by the commission and no part of any investigative record shall be released for any purpose other than a hearing before the commission or its designated hearing officer, review by another law enforcement agency or lawful licensing authority upon issuance of a subpoena from such agency or authority or at the discretion of the commission upon an affirmative vote of a majority of the quorum of the commission, review by the respondent after the service of a notice of hearing, review by the commission's legal counsel, or an appeal of a decision by the commission to a court of competent jurisdiction; provided, however, that if an investigation authorized by this Code section results in the commission's filing a notice of hearing or entering into settlement discussions with a member of the commission, the commissioner shall immediately notify the Governor or the Governor's executive counsel of such action by the commission. After service of a notice of hearing, a respondent shall have a right to obtain a copy of the investigative record pertaining to the respondent. Nothing in this subsection shall prevent the commission, in its sole discretion, from notifying persons who request investigations or respondent licensees of the receipt of a request for investigation or the commission's disposition of the investigation nor from making available to the public any

documents that become a public record during the hearing process authorized by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"

#### **SECTION 16.**

All laws and parts of laws in conflict with this Act are repealed.